UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

WALT DISNEY WORLD CO., Respondent

and

Case No. 12-CA-25889

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1625, Charging Party

RESPONDENT, WALT DISNEY WORLD CO.'S REPLY BRIEF TO CHARGING PARTY'S RESPONSE TO RESPONDENT'S EXCEPTIONS

Respondent, Walt Disney World Co. ("Disney," the "Company," or the "Respondent"), submits its Reply Brief to the Charging Party's Response to Respondent's Exceptions ("Response").

I.

INTRODUCTION

The Company sets forth in Section II below its arguments in opposition to the Charging Party's Response. The Company responds only to those arguments in the Response that raise additional issues not addressed in Respondent's Brief in Support of Exceptions to the Decision of the Administrative Law Judge.

II.

ARGUMENTS IN OPPOSITION TO CHARGING PARTY'S RESPONSE BRIEF

A. The Company Properly Cited The Record In Support Of All Of Its Exceptions

The basis for the Charging Party's contention that the Company failed to cite to the Record in support of its Exceptions is unclear, but this allegation is plainly specious. [Response:

4, 13, 15, 16]. While the Exceptions themselves primarily cite only to those portions of the Administrative Law Judge's ("ALJ") decision (the "Decision") to which the Company takes exception, the Company's Brief in Support of Exceptions to the Decision provides ample record and case law authority in support of the Exceptions. Finally, to the extent that any of the Company's Exceptions do not cite to the Decision, this is because they relate to the ALJ's failure to address or discuss a particular issue; the Company cannot cite to the Decision for an issue that the Decision fails to mention at all. Accordingly, the Charging Party's assertions that the Company failed to properly cite the record are without merit.

B. The ALJ Erred By Failing To Acknowledge The Union's Refusal To Clarify The Relevance Of The Information Requests To Which The Company Objected And Sought Clarification

The Charging Party argues that Respondent's Exception No. 10 is in error because the ALJ properly determined that the Company was required to obtain the consent of the Union before implementing the reorganization. [Response: 8]. This argument misconstrues, and thus improperly analyzes, Respondent's Exception No. 10. Respondent's Exception No. 10 argues that the ALJ erred by failing to "find that Disney also objected on relevance grounds to those requests to which it did not respond fully, and that it requested that Local 1625 explain the relevance of the documents, which it failed and refused to do. [GC Exh. 9]." Thus, the Company argues that the ALJ erred by failing to acknowledge the Union's obligation to clarify the relevance of the requests for which the Company sought clarification. The fact that the ALJ concluded, after an unfair labor practice hearing, that the information requested was relevant does not address the Union's failure to respond to the Company's contemporaneous request that the Union clarify the relevance of its information requests. The Union's failure to clarify the

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Citations to the Response are formatted as follows: [Response: 1, 3] refers to pages 1 and 3 of the Response.

relevance of its requests relieved the Company of its obligation to furnish the requested information. See, e.g. Allegheny Power, 339 NLRB 585, 173 LRRM 1125, 1131 (2003).

Moreover, the Charging Party's assertion that the Company did not seek an accommodation of the information requests is without merit. [Response: 10]. *Allegheny Power* makes clear that a party may both object to, and seek an accommodation of, an information request. *Id.; see also Silver Brothers Co., Inc.*, 312 NLRB 1060, 146 LRRM 1010 (1993). That is precisely what the Company did in this case, but the Union failed to respond to the Company's request that the Union clarify the relevance of the information requests to which the Company objected. [GC Exh. 9; Trans. 452/1-18]. Accordingly, the Company was relieved of its duty to furnish information to the Union.

C. The Charging Party's Assertion That The Company Resolved The Effects Of The Reorganization Decision At Or Near The Time The Decision Was Made Is Without Merit

The Charging Party asserts that the Company unilaterally determined the effects of the reorganization, and implies that these effects were resolved at or near the time the reorganization decision was made. [Response: 9]. There is a complete absence of record evidence to support this conclusion, however. The facts demonstrate that the effects of the reorganization were resolved only after the Union failed and refused to respond to the Company's offers to engage in effects bargaining. Testimony of Ann Williams and Jerry Vincent, correspondence between the Respondent and the Local 1625 catering bargaining unit, and the "Message Points" document that the Company prepared in advance of the May 5, 2008 meeting with members of Local 1625 about the reorganization, all establish that after the May 5, 2008 meeting, the Company repeatedly offered, and Local 1625 consistently refused, to engage in effects bargaining concerning the reorganization decision. [Trans. 614/9-618/15; 433/23-434/3; 504/20-505/10; GC Exh. 4, 5, 7; Resp. Exh. 15]. Further evidence of the Company's good faith intent to engage

in effects bargaining is the fact that it set aside a payout of \$200,000.00 to be allocated to effects bargaining negotiations. [Trans. 626/2-13]. Therefore, it is undisputed that the Company did not resolve the effects of the reorganization until after the Union's refusal to engage in effects bargaining. On the contrary, by failing to respond to the Company's offers to engage in effects bargaining, the Union waived the right to engage in effects bargaining. *Noblitt Bros.*. 305 NLRB 329, 139 LRRM 1336, 1338 n. 10; *see also Michigan Ladder Co.*, 286 NLRB 21, 127 LRRM 1092, 1093 (1987).

D. The Company's Proposal During Negotiations Of the 2007-2010 CBA To Eliminate The Bartender Classification Does Not Indicate That The Company Believed It Lacked The Authority To Unilaterally Eliminate The Classification

The Charging Party argues that the Company cannot have believed that the CBA granted it the authority to unilaterally eliminate classifications because in 2007 collective bargaining negotiations, the company made and then withdrew a proposal to eliminate the Bartender classification. [Response: 19-20]. This argument ignores both common sense and record evidence. First, it is obvious that a change achieved through collective bargaining is less likely to be the subject of a grievance or unfair labor practice charge than a change that is implemented unilaterally and without consent. Thus, it is entirely logical that an employer might propose during bargaining a change that it believed it had the authority to make unilaterally, if the employer believed that achieving the change through bargaining would make future grievances or litigation less likely. Indeed, this is completely consistent with Jerry Vincent's testimony.

Jerry Vincent testified that he believed, during the negotiations for the 2007-2010 CBA, that addition of the "Staffing Guidelines" language in Addendum B-5 would act as a counterweight to any argument by the Union that the Bartender position was somehow guaranteed by the CBA. [Trans. 464/21-465/8]. The "Staffing Guidelines" language provided that "[m]anagement reserves the right to staff functions as it deems appropriate." Jerry Vincent's

position during bargaining was consistently that the "Staffing Guidelines" language, along with the Management Rights clause, provided the Company with the authority to eliminate the Captain and Bartender classifications, regardless of the fact that a staffing matrix for Bartenders remained in the CBA. [Trans. 466/3-7]. Accordingly, the Company's withdrawal, in 2007, of a proposal to eliminate the Bartender classification does not indicate that the Company believed

that such a classification elimination required decision bargaining with the Union.

The Union's position on this issue is internally contradictory. If agreeing to allow the Bartender matrix to remain in the 2007-2010 Addendum B-5 allegedly reflects Disney's acknowledgement that the Bartender classification survived that bargaining, the Union's agreement to remove Captains from the 2007-2010 matrix must necessarily reflect its agreement that Captains as a classification could be eliminated unilaterally. The Union cannot have it both ways on this argument.

III.

CONCLUSION

For all of the foregoing reasons, the Respondent respectfully requests that the Board vacate the Findings, Conclusions and Recommended Order and Notice of the ALJ and dismiss the Complaint in its entirety.

Dated: August 19, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2009, a true and correct copy of the above and foregoing has been furnished by U.S. Mail to:

Richard Siwica, Esq. Egan, Lev & Siwica, P.A. P. O. Box 2231 Orlando, Florida 32806

and

Chris Zerby, Field Attorney National Labor Relations Board Region 12 - Tampa Office 201 E. Kennedy Blvd. Suite 530 Tampa, Florida 33602

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